X-pand into the Future

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Date: Frankfurt, December 15, 2006
Recipients: All Eurex Clearing Members and Vendors
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Clearing Conditions: Regulations for Contractual Penalties in Case of Default out of FWB Transactions Adjusted

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Content may be most important for:	**Attachment:**
➲ Middle + Backoffice ➲ IT/System Administration	Updated sections of Clearing Conditions for Eurex Clearing AG, effective as of January 2, 2007

In its session on December 13, 2006, the Management Board of Eurex Clearing AG decided to amend the Clearing Conditions for Eurex Clearing AG.

Purpose of the amendments is to adjust regulations referring to contractual penalties in case of a Clearing Member's late delivery in securities or rights out of transactions concluded at Frankfurt Stock Exchange (FWB). Corresponding references were amended as well.

The Clearing Conditions will come into force on **January 2, 2007**.

For any further questions you may have, please call the CCP Functional Helpdesk at tel. +49-69-211-1 19 40.

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[....]

Chapter I
General Provisions

[....]

Part 7
Default

7.1 ~~Events of~~ Default

(1) A Clearing Member will – without notice – be considered to be in default if:

a) the Clearing Member fails to provide the margin demanded by Eurex Clearing AG for any Business day or fails to pay when due a daily settlement payment, or any net premiums or other fees owed, in a timely manner (pursuant to Number 3.1 Paragraph 4, Number 3.2 and with respect to each transaction concluded on the markets pursuant to the particular default provisions specified in Chapters II through VI), or fails to deliver the securities owed by it on the delivery day or fails to provide the payment owed for such securities; or

b) such Clearing Member has failed to fulfill any other obligation to Eurex Clearing AG arising under these Conditions.

(2) Members must notify Eurex Clearing AG immediately and unrequested if they are unable to fulfill any obligation arising out of transactions concluded on the markets named in the following Chapters, including, in particular, the provision of margin or any daily settlement payment.

(3) The Boards of Management of the markets named in the following Chapters may exclude any Clearing Member of Eurex Clearing AG from trading on Eurex Deutschland and Eurex Zürich pursuant to the provisions valid for the respective markets in the event that the Clearing Member fails or is unable to provide the margin required of it or a daily settlement payment owed by it or any other payment set forth in Paragraph 1 in a timely manner. Number 9.2 Paragraph 5 shall remain unaffected.

(4) Eurex Clearing AG may have recourse to a Clearing Member for damages suffered by it or other Clearing Members due to a default caused by such Clearing Member. ~~Irrespective of whether Eurex Clearing AG has suffered any damage, the Clearing Member that has fallen behind because of a delay as regards delivery of owed securities or rights in due time or a delay in payment for such owed securities shall be obliged to pay a contractual penalty pursuant to the respective provisions of Chapter II Part 2 (Settlement of Futures contracts), of part 3 (Settlement of Options contracts), of Chapter II Part 3 (Settlement of Transactions at Eurex Bonds GmbH), of Chapter III Part 2 (Settlement of Transactions through the System of Eurex Repo GmbH) as well as Chapter IV Part 2 (Settlement of Transactions concluded at the Frankfurt Stock Exchange (FWB)).~~

~~(5)~~ Irrespective of whether Eurex Clearing AG has suffered any damage, the Clearing Member that has fallen behind because of a delay as regards the payment for securities or rights, a delay as regards the payment of deposits, which is demanded on Business exchange day or daily settlement payments as well as owed net premiums and other remunerations shall be obligated to pay a contractual penalty in the amount of 0.025 percent of the outstanding amount, but no less than EUR 2,500 – or the corresponding equivalent in CHF – per calendar day, however, no more than EUR 25,000 or the corresponding equivalent in CHF. If the amount calculated from the above percentage exceeds EUR 25,000, the amount of the contractual penalty shall – notwithstanding the provisions in Clause 1 – be calculated according to a percentage of the outstanding amount, such percentage having been defined in advance by Eurex Clearing AG. Such percentage shall be based on the money-market rates prevailing in the market. Eurex Clearing AG has the right to charge a contractual penalty even if it accepts a delayed payment without explicitly reserving such right.

(~~6~~5) If a Clearing Member is in default pursuant to Paragraph 1, Eurex Clearing AG shall close out its transactions and positions pursuant to Number 8.1 and realize margin.

(~~7~~6) The right of Eurex Clearing AG and of the Clearing Member which has suffered damage as a consequence of such default to claim further damages shall remain unaffected. Eurex Clearing AG shall, upon written application by a Clearing Member which has suffered damage as a consequence of such default, be entitled to assign to it with discharging effect any claim that it may have against such defaulting Clearing Member or Clearing Members.

(~~8~~7) Paragraph 1 through ~~7~~ 6 shall not apply to a Link Clearing House as Special Clearing Member. In this respect, the provisions of the Clearing Link Agreement to be concluded between both Clearing Houses and the relevant Rules of the Link Clearing House apply.

7.2 Technical Default

(1) If a Clearing Member furnishes evidence to Eurex Clearing AG that any of the defaults set forth in Number 7.1 Paragraph 1 Item a did not occur as a consequence of insolvency and that the Clearing Member will promptly meet its obligations, Eurex Clearing AG may elect that, with respect to such Clearing Member, the provisions pursuant to Number 7.1 Paragraphs 3 as well as Paragraph ~~6~~ 5 through ~~7~~ 6 which are applicable in the event of default do not apply. In such a case, Eurex Clearing AG will only cause a technical default of such Clearing Member.

(2) The Clearing Member concerned shall, promptly upon the occurrence of a technical default, deliver to Eurex Clearing AG a written statement as to the reasons for its delinquency.

(3) The Clearing Member concerned must promptly remedy the causes of its technical default.

(4) In the event of a technical default with respect to a payment in EUR, CHF or in foreign currency pursuant to Paragraph 1 Eurex Clearing AG may demand from the Clearing Member of which Eurex Clearing AG caused default to provide promptly the equivalent amount in EUR and, respectively, CHF of the amount not having been entered in time on Eurex Clearing AG's account at a branch of the Central Bank of Germany (Deutsche Bundesbank) or SNB. The amount in EUR or CHF will be repaid without interest after receipt of the owed

CHF payment or, respectively, of the EUR payment or of the foreign currency payment. Paragraph 5 shall remain unaffected.

(5) Eurex Clearing AG may claim compensation from any Clearing Member for any damage suffered by Eurex Clearing AG or other Clearing Members due to a technical default of such Clearing Member. Irrespective of whether Eurex Clearing AG has suffered any damage, the Clearing Member which technically defaulted shall be obligated to pay a contractual penalty pursuant to Number 7.1 Paragraph ~~5~~4.

[....]

Chapter II
Transactions at Eurex Deutschland and Eurex Zürich (Eurex Exchanges)

[....]

Part 2
Clearing of Futures Contracts

[....]

2.2 Clearing of Money Market Futures contracts

[....]

2.2.4 Default in Payment

Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

2.3 Clearing of Fixed Income Futures contracts

[....]

2.3.5 Default

(1) For default or technical default ~~at payment~~, the regulations pursuant Chapter I Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ apply respectively.

[....]

2.4 Clearing of Index Futures Contracts

[....]

2.4.4 Default in Payment

Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

2.5 Clearing of Futures Contracts of Exchange Traded Fund Shares

[....]

2.5.4 Default

(1) Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I, Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

[....]

2.6 Clearing of Volatility Index Futures contracts

[....]

2.6.4 Default

Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I, Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

2.7 Clearing of Futures Contracts on Shares

[....]

2.7.4 Default

Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

Part 3
Clearing of Options Contracts

[....]

3.4 Clearing of Index Options Contracts

[....]

3.4.6 Default in Payment

Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4~~ and Number 7.2 ~~Paragraph 5~~ respectively.

3.5 Clearing of Options contracts on Shares of Exchange-Traded Funds (EXTF Options)

[....]

3.5.6 Default

(1) Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4 and 5~~ or Number 7.2 ~~Paragraph 5~~ respectively.

[....]

3.6 Clearing of Options Contracts and Low Exercise Price Options on Shares

[....]

3.6.6 Default

(1) Defaults or technical defaults ~~in payment~~ shall be subject to the provisions of Chapter I Number 7.1 ~~Paragraph 4~~ or Number 7.2 ~~Paragraph 5~~ respectively.

[....]

Chapter III
Transactions at Eurex Bonds GmbH

[....]

Part 2
Clearing of Transactions at Eurex Bonds GmbH

[....]

2.4 Default ~~in Delivery or Payment~~

(1) In the event that a Clearing Member which is obligated to deliver fails to deliver the securities sold by it by way of a Eurex Bonds Transaction on the value date and pursuant to the instructions of Eurex Clearing AG, Eurex Clearing AG shall be entitled or, on request of the Clearing Member which did not receive delivery in a timely manner, obligated to make a replacement purchase with respect to the undelivered securities as from the fifth business day following the value date and to deliver these to the Clearing Member which did not receive delivery in a timely manner. Eurex Clearing AG may determine at its complete discretion how replacement purchases of securities are to be made and up to which maximum purchase price such securities may be purchased.

(2) Measures set forth in Paragraph 1 shall be binding on and accepted by the Clearing Member which did not receive delivery in a timely manner.

(3) Any costs arising from the measures taken in accordance with Paragraph 1 must be paid by the Clearing Member obligated to deliver.

(4) ~~In the event that the Clearing Member fails to provide the margin demanded for any business day or fails to pay when due a daily settlement payment or other fees in a timely manner, or if such Clearing Member has failed to fulfil any other obligation to Eurex Clearing AG arising under these Conditions, Chapter I Number 7.1 Paragraph 1 to 3 and Number 7.2 and 8.1 shall apply mutatis mutandis.~~ The right to claim further damages shall be excluded for Eurex Clearing AG as well as for the Clearing Member which did not receive delivery in a timely manner.

(5) ~~The right of Eurex Clearing AG and the Clearing Member which did not receive delivery in a timely manner to claim further damages shall be excluded~~ Furthermore, Chapter I Number 7.1 respectively 7.2 shall apply for delay or technical delay.

Chapter IV
Clearing of Transactions at Eurex Repo GmbH

Part 1
General Provisions

[....]

1.1 Clearing Licenses

1.1.1 Granting of Clearing Licenses

(1) A Clearing License is required in order to participate in the clearing of Eurex Repo Transactions concluded through the System of Eurex Repo AG; Eurex Clearing AG shall grant such License upon written application.

(2) Upon request, central banks or development banks of the Federal Republic which are under supervision of a Federal Ministry indicated by Eurex Clearing AG, and international organisations may be released wholly or partially from the obligation to meet the requirements pursuant to Clause 1 and Number 1.1.2.

[....]

Part 2
Clearing of Transactions at Eurex Repo GmbH

[....]

2.6 Default ~~in Delivery or Payment~~

[....]

(4) The right to claim further damages shall be excluded for Eurex Clearing AG as well as for the Clearing Member which did not receive delivery in a timely manner.~~In the event that the Clearing Member fails to provide the margin demanded for any business day or fails to pay when due a daily settlement payment or other fees in a timely manner, or if such Clearing Member has failed to fulfil any other obligation to Eurex Clearing AG arising under these Conditions, Chapter I Number 7.1 Paragraph 1 through 3, Number 7.2 and Number 8.1 shall apply mutatis mutandis.~~

(5) ~~The right to claim further damages shall be excluded for Eurex Clearing AG as well as for the Clearing Member which did not receive delivery in a timely manner.~~ Furthermore, Chapter I Number 7.1 respectively 7.2 shall apply for delay or technical delay.

[....]

Chapter V
Transactions Concluded at the Frankfurt Stock Exchange [1]

[....]

Part 2
Clearing of transactions concluded at the Frankfurt Stock Exchange (FWB)

[....]

2.2 Delay ~~in Delivery or Payment~~

[....]

(7) ~~Eurex Clearing AG can have recourse against a Clearing Member for damages it or other Clearing Members incur as a result of a default that a Clearing Member has caused. Irrespective of whether Eurex Clearing AG has suffered any damage, the defaulting Clearing Member shall be obligated to pay a contractual penalty. The contractual penalty shall be calculated as follows:~~

~~Until the defaulting Clearing Member has rendered delivery or until Eurex Clearing AG has conducted replacement purchase through an auction or until Eurex Clearing AG has implemented cash settlement, Eurex Clearing AG has a payment claim for a sum of money against the defaulting Clearing Member in the amount of 0.04 percent of the current value of the securities and rights to be delivered on the basis of an FWB transaction, and at least EUR 100.00 per business day to a maximum of EUR 10,000.00 The period determining the calculation of the contractual penalty shall be extended by one business day respectively at the utmost, up to and including the day on which Eurex Clearing AG has transferred the securities or rights delivered to it, or the securities it has received by way of replacement purchase, to the Clearing Members towards which it has a delivery obligation. This shall apply mutatis mutandis where delivery claims or any claims for damages are assigned to Eurex Clearing AG, or where it conducts cash settlement.~~

~~Furthermore, Eurex Clearing AG shall have a claim on the defaulting Clearing Member for payment of interest in the amount of a percentage, to be announced in advance by Eurex Clearing AG, of the countervalue of the securities and rights to be delivered per calendar day. This percentage shall be based on the money market rate prevailing in the market plus 1 percent.The period determining this payment claim shall be calculated as per the above-~~

[1] With regard to the clearing of transactions concluded at the Rhenish-Westfalian Exchange in Düsseldorf (Rheinisch-Westfälische Börse zu Düsseldorf) which share the securities and rights named in Chapter , Chapter V and all remaining provisions of the Clearing Conditions for Eurex Clearing AG shall apply.

~~mentioned provision for contractual penalty. The penal interest collected by Eurex Clearing AG shall be credited to the Deutsche Bundesbank branch account of the Clearing Member to receive delivery.~~

(~~8~~7) Furthermore, Chapter I Number 7.1 respectively 7.2 shall apply for delay or technical delay.~~In the event that the Clearing Member fails to provide the margin demanded for any business day or fails to pay, when they are due, daily settlement payment or other fees in a timely manner, or if such Clearing Member has failed to fulfil any other obligation to Eurex Clearing AG arising under these Conditions, Chapter I Numbers 7.1 through 8.1 shall apply mutatis mutandis.~~

(~~9~~8) ~~The right of Eurex Clearing AG and of Clearing Members which did not receive punctual deliveries to claim further damages shall remain unaffected.~~

[....]

Chapter VI
Transactions Concluded at the Irish Stock Exchange

[....]

Part 2
Clearing of transactions concluded at the Irish Stock Exchange (ISE)

2.1 Settlement of ISE transactions

[....]

2.1.5 Delay ~~in Delivery or Payment~~

[....]

~~(7) Eurex Clearing AG can have recourse against a Clearing Member for damages it or other Clearing Members incur as a result of a default that a Clearing Member has caused.~~

(~~8~~7) ~~In the event that the Clearing Member fails to provide the margin demanded for any business day or fails to pay, when they are due, daily settlement payment or other fees in a timely manner, or if such Clearing Member has failed to fulfil any other obligation to Eurex Clearing AG arising under these Conditions, Chapter I Numbers 7.1 through 8.1 shall apply mutatis mutandis.~~Furthermore, Chapter I Number 7.1 respectively 7.2 shall apply for delay or technical delay.

~~(9) The right of Eurex Clearing AG and of Clearing Members which did not receive punctual deliveries to claim further damages shall remain unaffected.~~

[....]